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July 3, 1997

VIA HAND DELIVERY

Ms. Suzanne Toller
Legal Advisor to the Honorable Rachelle Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Re: CMRS Safeguards Processing, CC Docket No. 96-162

Dear Suzanne:

Thank you for meeting with us recently to discuss ITTA's issues in the Commission's LEC CMRS safeguards proceeding. We wanted to follow-up our discussion concerning why the regulatory approach for LEC offering of CMRS services should not follow the approach the Commission enunciated in its *Dom/Non-Dom Order*[1] to regulate LEC offering of long distance services.

As you know, when Congress enacted the Telecommunications Act of 1996, it rejected a "one-size fits all" approach to regulating LECs in favor of flexibility that considers the unique needs of smaller LECs as compared to their larger competitors. For this reason, Congress established a tri-partite regulatory framework for rural, mid-sized, and larger local telephone companies based upon their relative positions in the marketplace. The Commission's

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1 *See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, FCC 97-142 (rel. Apr. 18, 1997) ("*Dom/Non-Dom Order*").

regulations, such as those involved in this proceeding, should reflect this distinction. See attached letter from Representative Rick Boucher and 14 other Members to Chairman Reed Hundt, dated June 25, 1997.

In addition, while ITTA has argued the case against imposing separate affiliate safeguards on independent, mid-sized LEC provision of long distance services (see ITTA Comments in CC Docket No. 96-149),[2] the case against imposing such safeguards on mid-sized (and rural) LEC provision of CMRS is even more compelling. There are fundamental structural differences between LEC provision of long distance services and CMRS services that make it even more unlikely that mid-sized LECs would be able to discriminate against CMRS competitors.

In the *Dom/Non-Dom Order*, the Commission concluded that an independent LEC's control of exchange and exchange access facilities may give it the incentive and ability to engage in unlawful interconnection discrimination, cost misallocation, or a price squeeze.[3] As discussed below, because of the mobile nature of CMRS services and the manner in which they are offered, there are few, if any, incentives to engage in the anticompetitive behavior with which the Commission is concerned. Thus, there is no need to impose additional regulatory burdens when competitive market structures and existing Commission regulation provide sufficient safeguards.

For most independent LECs, the geographic scope of their CMRS service territory far exceeds that of their local exchange service area. Further, the configuration (including switch location) of the CMRS system is dependent on considerations independent of those used in the design and operation of local exchange territories. Most significant among these considerations given the mobile nature of CMRS services (as opposed to the point-to-point nature of interexchange services) are the differing population densities between the CMRS service territory and LEC territory,[4] congestion avoidance, and the need to efficiently route calls from high

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2 As ITTA intends to make clear in its petition for reconsideration, most mid-sized LECs do not maintain exchange service territories with sufficient scope to cross LATA boundaries. Consequently, most mid-sized LECs are forced to resell long distance service in both intrastate and interstate interLATA markets. Given the requirements of the Telecommunications Act of 1996, it is practically impossible for a mid-sized LEC to either discriminate against any interexchange company or in favor of a particular interexchange company whose services the LEC resells. Concerns regarding cost-shifting and other anti-competitive activities are adequately addressed through application of the Commission's existing accounting rules.

3 *Id.* at ¶ 163.

4 For example, while ALLTEL provides local exchange service to small towns outside of Charlotte, NC, it is the cellular licensee for the Charlotte MSA.

volume areas for access to, and termination from, the CMRS system. Because of these considerations and the fact that the greatest volume of CMRS calls in such situations both originate and terminate *outside* the mid-sized LEC's exchanges, mid-sized LECs generally locate their mobile switches outside of their local exchange service territories and, therefore, do not interconnect their local exchange switches with their mobile switches.

In fact, most mid-sized LECs interconnect their cellular mobile switches with other (typically, far larger) local exchange carriers in adjoining markets upon whose facilities the independent LEC's CMRS system is dependent for routing, origination and termination of CMRS calls. For example, 80% of the calls that ALLTEL cellular customers make are carried in whole or in part on networks other than ALLTEL's local exchange network. Because a mid-sized LEC generally does not interconnect with itself and is, therefore, dependent upon other carriers to carry its subscriber's calls, they generally lack the ability to discriminate in any form of interconnection. Indeed, the independent LEC stands in the same position as other CMRS carriers vis-à-vis their interconnection arrangements. Further, given the relatively low volume of calls over the entire CMRS network which may either originate in, or terminate to, an independent LEC's territory, there is little, if any, incentive to discriminate against other carriers -- to do so would only harm the service quality its own CMRS customers receive.

In addition, because mid-sized LECs are located in and around the regions of larger incumbent LECs, they have relatively little bargaining power to exert their so-called "bottleneck" control with respect to these entities in negotiating these interconnection agreements. As Congress recognized, mid-sized LECs compete against telecommunications carriers that are large global or nationwide entities that have financial and technological resources that are significantly greater than its resources.[5]

Moreover, Section 252(f) requires incumbent LECs to file these interconnection agreements with state regulatory agencies. It is standard industry practice for such agreements to contain "same-as" clauses that allow the party to take advantage of more favorable pricing, terms and conditions the incumbent LEC has negotiated with any other party. As a result, the prices, terms and conditions that are available to other incumbent LECs are, in actuality, available to all interconnecting parties (including CMRS providers that are not LEC-affiliated). Thus, the Commission's concern about mid-sized LECs engaging in a price squeeze is misplaced because of the lack of bargaining power it has with other incumbent LECs, on which it is dependent, and which, by extension, are available to all other entities seeking interconnection.

Finally, the Commission's existing cost-allocation rules, which have been applied to LEC offering of CMRS services are sufficient to detect any improper cost misallocation between the mid-sized LEC's local exchange and CMRS operations. This is especially the case for those mid-sized LECs that have elected price cap regulation.

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[5] S. Rep. No. 104-23, 104th Cong., 1st Sess., at 22 (1995).

Because of the safeguards already built into the market structure, it is little wonder that, even in the absence of separate affiliate requirements, the record in this proceeding does not contain any evidence of abuse by mid-sized LEC's of its local facilities to the detriment of competition.

If you have any questions concerning these matters, please contact me at (202) 637-2147.

Sincerely,

Michael S. Wroblewski

Attachment

cc: Jackie Chorney
Rudy Baca
James Casserly
Regina Keeney
William Kennard
Daniel Phythyon
Karen Gulick
Donald Stockdale
Michael Riordan
John Nakahata
David Furth
Jane Halprin

Congress of the United States
Washington, DC 20515

June 25, 1997

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

We are writing to express our concern over the apparent trend in the Commission's regulation of mid-sized, independent telephone companies ("mid-sized companies"). In a number of recent proceedings, the Commission has imposed regulations on mid-sized companies that would significantly burden and ultimately curtail the effectiveness of these companies as a pro-competitive force in the telecommunications marketplace. We strongly urge your reconsideration of these regulatory measures.

In passing the Telecommunications Act of 1996, Congress rejected a "one-size-fits all" approach to regulating telephone companies. We recognized the need to have a flexible regulatory approach that takes into account the special needs of smaller companies vis-a-vis their larger competitors. For this reason, we established a regulatory framework addressing the separate circumstances of *three* broad categories of companies: small rural companies, mid-sized companies, and large local telephone companies.

We are concerned that the Commission's recent decisions fail to acknowledge the particular concerns of mid-sized companies and accordingly fail to limit appropriately the regulatory burdens placed on these companies commensurate with their size and unique circumstances as Congress intended.

For example, in recent orders the Commission has held that all incumbent local telephone companies may only offer in-region long distance through a separate affiliate. The Commission has also proposed a similar separate affiliate requirement for some mid-sized companies' provision of wireless services. These requirements place an unnecessary regulatory burden on mid-sized companies, most of whom have been offering services such as cellular telephony for years without the need for a separate affiliate. No persuasive showing has been made at the Commission to justify these regulatory burdens, and we urge their reconsideration.

In deliberations over the 1996 Act, Congress decided against imposing a separate affiliate requirement on the mid-sized companies for their provision of long distance and wireless services. We decided to impose a separate affiliate requirement on the largest local telephone companies only after extensive debate and only on the condition that the separate affiliate requirement would sunset three years after any such company is authorized to provide interLATA services unless the Commission extends the period by its own action. The Commission's decision to impose the separate affiliate requirement on mid-size companies' provision of in-region long distance services does not sunset until further Commission action. This decision by the Commission ignores the rejection by the Congress of the proposal to require separate affiliates for mid-sized companies and actually imposes more severe separate affiliate requirements on them, due to absence of a sunset, than the Commission has imposed on the largest local telephone companies, with respect to which the Congress did decide to require separate affiliates for a limited time. This result clearly requires reexamination.

In addition, the Commission has decided that large long distance companies are not required to establish separate affiliates for their joint offerings of local and long distance telephony. Smaller, independent telephone companies should not be subject to heavier regulatory burdens than are these companies.

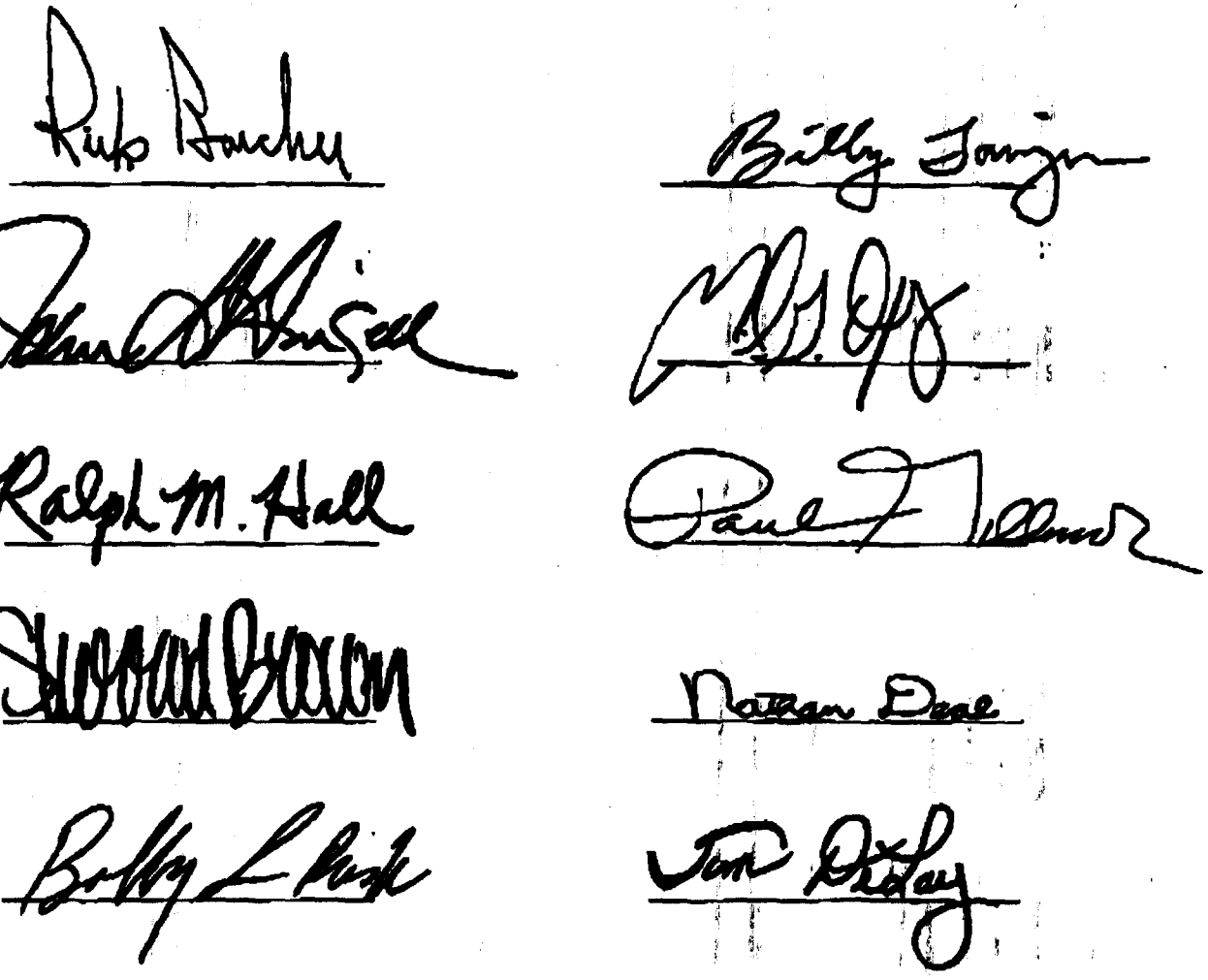
Another example where the Commission has failed to address the special circumstances of mid-sized companies is in its access reform initiative. In that proceeding, the Commission decided to change the rules governing companies subject to price caps in order to reduce access charges, leaving the decision on the appropriate regulation of companies subject to rate of return rules to a later proceeding. While this strategy was no doubt an effort to deal with the largest companies first, several mid-sized companies were caught up in the rule change because they are subject to price caps. The Commission's decision did not address the vastly different effect access reform will have on the mid-sized companies subject to price caps as compared to the larger price capped companies, even though the Commission's initial price cap decision recognized the difference between large and mid-sized companies by allowing the smaller companies to choose voluntarily price cap regulation in the first place.

Mr. Chairman, these and other examples suggest a pattern of inattention at the Commission to the differing needs of smaller, mid-sized companies and their unique potential to provide much of the competition Congress envisioned in passing the Telecommunications Act of 1996. We, therefore, strongly urge you to reconsider your decisions and in doing so assess the effect of proposed regulations on mid-sized

companies as Congress intended. At a minimum, the Commission should be moving toward lessening regulation of these entities, rather than imposing costly and burdensome new regulations.

Thanking you for your attention to these comments, we are

Sincerely,



Letter to Reed E. Hundt
--page 4--

Joe Barton

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